IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 604 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIR KALUMIYA NANVALA

Versus

DY. POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 604 of 2001

MR NM KAPADIA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2002

ORAL JUDGEMENT

The petitioner came to be externed from the territories of Surat City, Surat Rural Dist., Districts of Navsari, Bharuch and Valsad, by an order passed on

September 4, 2000, by Deputy Commissioner of Policy, North Zone, Surat City. The said order was challenged before the Government and the appellate authority of the Government while accepting the appeal and setting aside the order, directed the petitioner to execute a bond of Rs. 25,000/- within 30 days and to furnish two sureties of good conduct for 2 years. Aggrieved by the said order of the appellate authority dated 13.7.2001, present petition is preferred under Art. 226 of the Constitution of India on various grounds.

2. Learned Advocate Mr. Kapadia appearing for the petitioner has restricted his argument to the ground of delay. He submitted that the order was passed after a lapse of more than one year. The appellate authority accepted this contention. If that is accepted, the appellate authority could not have directed the petitioner to execute a bond and to furnish two sureties of good conduct for two years. In support of his contention, Mr. Kapadia has relied on a decision of this Court in case of Abbas Hussain Vs. Deputy Police Commissioner, Surat, reported in 1988 Criminal Law Journal 434.

3. The petition is opposed to by learned APP Mr. D.P. Joshi.

4. There is no dispute about the fact that the order of externment came to be passed after a lapse of more than one year. In appeal against that order, the appellate authority also accepted that the order was passed after one year and was therefore, bad on account of delay. The said order was quashed and set aside by the appellate authority. The appellate authority however, directed the petitioner to execute a bond of Rs. 25,000 and to furnish two sureties of good conduct for a period of two years. In the case of Abbash Hussain (supra), this Court observed that delay in passing of externment order would vitiate the order. In that case also the appellate authority while setting aside the externment order, directed to execute bond and the Court observed "even this is, to keep peace in that locality as a preventive measure and this is available to the authorities concerned as per Sec. 56 of the Bombay Police Act. It can either remove the person concerned outside the area or direct the person to conduct himself as shall seem necessary in order to prevent violence and alarm. If such a delay is fatal for externment order, such delay is fatal also to an order for getting a bond as provided under Sec. 56 of the Act. Such preventive actions whether it is externment or by getting a bond

should be taken immediately and any inordinate delay will definitely vitiate such action as a preventive measure". The said decision would squarely apply to the facts of the present case. Here the order was passed by the externing authority after a lapse of one year and the appellate authority quashed that order on that count only. Still the authority directed execution of bond and furnishing two sureties of good conduct. This was not permissible being a preventive measure. The order therefore cannot be upheld.

The petition deserves to be allowed and the same is allowed. Order dated 4th Sept. 2000 passed by the externing authority against Shri Nasir Kalumiya Nanvala and order passed by the appellate authority, both are hereby quashed and set aside. Rule made absolute. Direct service for respondent No.1 permitted.

(A.L.Dave,J.)

*/Mohandas